UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CA, INC., COMPUTER ASSOCIATES
THINK, INC., PLATINUM TECHNOLOGY   :
INTERNATIONAL, INC. and PLATINUM
TECHNOLOGY IP, INC.   :

                   Plaintiffs,   :   Civil Action No.
                                 07-CV-1476 (ADS)(MLO)

       v.   :

ROCKET SOFTWARE, INC.   :

                 Defendant.   :

- x

Rocket's Motion **In Limine** For An Order That Apportionment Is The Appropriate Method To Calculate Damages Under This Court's Decision In *CA v. Altai*

PLEASE TAKE NOTICE THAT on a date to be specified by the Court,

Rocket, by and through its undersigned counsel, shall move in the United States District Court

for the Eastern District of New York, before the Honorable Arthur D. Spatt, Long Island

Courthouse, 100 Federal Plaza, Central Islip, New York, 11722, for an Order that apportionment

is the appropriate method to calculate damages under this District Court's decision in CA v.

Altai. In summary, these four reasons justify relief:

1. This Court in CA v. Altai (E.D.N.Y. 1991) held that a copyright-infringement plaintiff may seek only those damages which are causally related to the infringing conduct, and may not seek damages on the "but-for" theory that all of the alleged infringer's profits on the allegedly infringing product are attributable to the purported infringement.

2. Similarly, for a trade secret claim, there must also be a causal relationship between the misappropriation and a calculation of lost profits.

3. Here, CA does not challenge more than 99% of the source code in Rocket's products at issue.

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4. Any damages in this case must be calculated on an apportionment approach, as in <u>Altai</u>, and CA cannot attempt -- through experts or otherwise -- to recover damages based upon the theory that Rocket's profit in connection with the software at issue is entirely attributable to the alleged infringement.

PLEASE TAKE FURTHER NOTICE that in support hereof, Rocket shall rely

on the accompanying Memorandum of Law and Declaration of P. Anthony Sammi.

WHEREFORE, Rocket respectfully requests that this Court grant its motion.

Dated: February 2, 2009   Respectfully submitted,
      New York, New York

          /s/ P. Anthony Sammi
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          P. Anthony Sammi
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          Counsel for Defendant
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CERTIFICATE OF SERVICE

I, P. Anthony Sammi, hereby certify that on February 2, 2009, I caused a true and correct copy of the foregoing document to be served upon the following counsel for plaintiffs by the means of service so indicated:

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Dated: February 2, 2009   /s/ P. Anthony Sammi
                                                                          P. Anthony Sammi